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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/663,942	09/18/00	MAUBRU	M 05725.0290-0

EXAMINER	
PURI, A	
ART UNIT	PAPER NUMBER
1751	3

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DATE MAILED: 10/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

PTO-90C (Rev. 2/95)

1- File Copy

Office Action Summary	Application No.	Applicant(s)	
	09/663,942	MAUBRU, MIREILLE	
	Examiner	Art Unit	
	ANIL K PURI	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 September 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claims 1-27 are pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Faust [U.S. 3,930,865].

Faust, teaches a composition which contains a direct anthraquinone dye in the claimed amounts (see col.5 line 45), a terpolymer of methacrylic acid, dicyl methacrylate and p-chlorostyrene a residue unit of a crosslinking polymerizable monomer as methacrylic acid where alkyl radical having 4-15 carbon atom as claimed and additives as claimed and in claimed amount. (See example 3). Faust, therefore, anticipates the claimed compositions. The intended use of a claimed composition is given little, if any, patentable weight. See *In re Albertson*, 141 USPQ 730 (CCPA 1964), and *In re Heck*, 114 USPQ 161 (CCPA 1957).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a), which forms the basis for all obviousness rejections, set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negative by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al [U.S.4, 509,949]

Huang teaches polymers, which are particularly effective in the print pastes, which may contain reactive, direct or disperse dyes, (see abstract). The polymers comprise the claimed acrylic acid residue units, where alkyl group contains 10-30 carbon atom and polymerizable monomer units, wherein each unit may be present in the claimed amounts, and wherein preferred polymerizable monomers include the claimed diallyl ether, see col.3, lines 43-45 and example in table 1.Huang teaches the addition of such polymers in the claimed amounts to aqueous print paste which contain reactive dye amounts, additives such as thickeners (see col.4 lines 50-51), and which appear to have pH's as claimed due to the addition of carbonates, (see col.6, line 51, col. 7, line 34 and col. 8, lines 16-29. Huang does not exemplify a composition which contain a direct dye as claimed, and does not specifically teach improvement processes as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a dyeing composition which contains a direct dye, cross linked polymer, additives and water as claimed, wherein each component is present in the claimed amounts at the claimed pH, because such compositions fall with in the scope of those as taught by Huang. Particularly, it would have been obvious to ordinary skill in the art to substitute the reactive dye of Huang composition with direct dyes as claimed because one would expect that the use of reactive dye as taught by Haung would be similarly useful in hair dyeing composition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a), which forms the basis for all obviousness rejections, set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negative by the manner in which the invention was made.

Claims 1-9,15-19,23-27are rejected under 35 U.S.C. 103(a) as being unpatentable over Godo Kagaku or Mitsubishi Petrochemical Co'114 [JP 1-213,221] in view of Yshihara et al [U.S.5, 102,655].

Godo Kagaku Kogyo (herein referred to as Godo) teaches removable hair dye compositions that use a pigment as the coloring agent and a polysiloxane-group-containing anionic resin as the sticking agent and that exhibit excellent wear resistance and also impart a shine and smooth feel to the hair (see page 4 lines 17-20) and which fall with in the scope of the claimed cross-linked polymers for example comprising a methacrylic acid unit,and a polymerizable monomer unit (for example methacrylates with alkyl ester of acrylic acid and or methacrylic acid) (see page 5 line 8,page 8 lines12-16).The polymer may be present in the claimed amount and the composition may be packaged as **an aerosol** as claimed.(see page 27 lines 4-5) The hair dye compositions also contains also contain a colorant such as carbon black in the claimed colorant amounts (see page 17 lines 8-17) and water and organic solvents (see page 15 lines14-19) and additive as claimed. (See page 20 lines 1-8) Godo does not specifically teach the claimed pH, conservation processes and direct dye as claimed.

Yoshihara '655 in analogous art teaches hair treatment compositions, including hair-dyeing compositions (see abstract). The Yoshihara further teaches that temporary hair dyes include pigments such as carbon black, as well as direct dyes such as azo and anthraquinone dyes (see col. 4 lines 38-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate compositions for the temporary dyeing of hair which comprise a colorant such as carbon black, polymer, additives, water and organic solvents as claimed, wherein each component is present in the claimed amounts at the claimed pH and wherein such compositions may be in forms, such as aerosols or liquids as claimed, because such compositions are fall with in the scope of those as taught by Godo or Mitsubishi'114. Furthermore optimization of proportions and parameters such as pH would have been prima facie obvious to the skilled artisan in order to obtain the best hair dyeing compositions achievable, absent a showing otherwise. See *In re Aller,* 105 USPQ 233; *In re Luck*, 177 USPQ 523, and *In re Boesch*, 205 USPQ 215.It would have been obvious to those skilled in the art to at least partially substitute Godo's or Mitsubishi'114's carbon black colorants with a direct dye as claimed (such as an azo or anthraquinone dye) because Yoshihara teaches the equivalence between these colorants for the temporary coloring of hair. The office holds the position that selection of particular known temporary direct dyes for addition to such compositions would have been obvious to those skilled in the art in order to obtain the desired hair colors and shades absent a showing otherwise.

Further Godo'114 teaching in view of Yoshihara obviate conservation process as claimed which merely require the addition the addition of a polymer as claimed to a direct hair dyeing composition. Therefore prior art teaching of hair dyeing compositions suggests the claimed hair dyeing processes, which merely require the conventional steps of applying the compositions to wet hair (for example previously washed hair), following by conventional application times, rinsing and drying steps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANIL K PURI whose telephone number is 703/605-4427. The examiner can normally be reached on 8:30 AM TO 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr.Yogendra Gupta can be reached on (703)-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703/305-3599 for regular communications and 703/305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/308-0661.

AKP
September 28, 2001

YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700